

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

07

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

City of Rio Rancho,
a New Mexico Municipality,

Respondent

NPDES Permit Number NM0027987

§ Docket No. CWA-06-2007-1811
§
§
§ Proceeding to Assess a
§ Civil Penalty Under § 309(g)
§ of the Clean Water Act
§
§ ADMINISTRATIVE COMPLAINT
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (herein "Complainant"). This Class I Administrative Complaint is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including Rules related to Administrative Proceedings not Governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 - 22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. The City of Rio Rancho (herein "Respondent") is a municipality chartered under the laws of the State of New Mexico, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this action, Respondent owned or operated a publicly owned treatment works located at 100 Industrial Park Loop, Rio Rancho, Sandoval County, New Mexico (herein "the facility") and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant to this action, the facility was a "point source" of a "discharge" of "pollutants" with its municipal wastewater to the receiving waters of the Rio Grande in Segment No. 20.6.4.106 of the Middle Rio Grande Basin, which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that was a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a) provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0027987 (herein "the permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on February 1, 2004. At all times relevant to this action, Respondent was authorized to discharge pollutants in its municipal wastewater discharges from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Parts III.C. and III.D. of the permit require Respondent to sample and test its effluent, to monitor its compliance with permit conditions according to specific procedures, and to file with EPA Noncompliance Reports, when appropriate, and certified Discharge Monitoring Reports ("DMRs") of the monitoring results.

9. Part I.A. of the permit prescribes interim and final effluent limits for discharges from the facility. The interim effluent limits began on the effective date of the permit and lasted through three years from the effective date of the permit. The final effluent limits began three years from the effective date of the permit and lasts through the expiration date of the permit.

10. Certified DMRs filed by Respondent with EPA in accordance with the permit show discharges of pollutants from the facility that exceed the prescribed interim effluent limits of Part I.A. of the permit, as specified below:

Date	Outfall	Parameter	Violation	Permit Limit
December 2006	001A	Total Ammonia, 30-Day Avg.	2.43 mg/L	2.0 mg/L
December 2006	001A	Total Ammonia, 7-Day Avg.	3.94 mg/L	3.0 mg/L
February 2006	001A	F. Coliform, Daily Max.	260/ #100ml	200/ #100ml
July 2005	001A	F. Coliform, Daily Max.	260/ #100ml	200/ #100ml
March 2005	001A	F. Coliform, Daily Max.	240/ #100ml	200/ #100ml
December 2004	001A	F. Coliform, Daily Max.	455/ #100ml	200/ #100ml
September 2004	001A	F. Coliform, 7-Day Avg.	1300/ #100ml	200/ #100ml
May 2004	001A	F. Coliform, Daily Max.	900/ #200ml	200/ #100ml

11. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities subject to “storm water discharges associated with industrial activity” are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

12. Pursuant to Section 402(a) of the Act, EPA issued the Storm Water Multi-Sector General Permit for Industrial Activities (65 Fed. Reg. No. 210, 64746-64880, October 30, 2000) (herein "the MSGP "). The MSGP authorized “storm water discharges associated with industrial activity” to “waters of the United States” (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

13. Pursuant to 40 C.F.R. § 122.26(b)(14)(ix), the following categories of facilities are among those considered to be engaging in "industrial activity" for purposes of Section 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 C.F.R. part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA.

14. Pursuant to 40 C.F.R. § 122.26(b)(14), storm water discharge associated with industrial activity includes storm water discharges from industrial plant yards; material handling sites; refuse sites; sites used for the storage and maintenance of material handling equipment; storage areas for raw materials and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. Material handling activities include storage; loading and unloading; transportation or conveyance of any raw material, intermediate product, final product, by-product or waste product.

15. At all times relevant to this action, Respondent's facility was engaged in industrial activity and was subject to storm water discharges associated with industrial activity, within the meaning of 40 C.F.R. § 122.26(b)(14); therefore, Respondent was required to apply for NPDES permit coverage under the MSGP 180 days before commencing the subject activities thereafter.

16. According to the EPA database that records all applications for MSGP coverage, Respondent did not make timely application for permit coverage for its storm water discharges associated with industrial activities at the facility and was thus not covered by the MSGP at the relevant times for the relevant activities.

17. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

18. Respondent's failure to apply for coverage under the MSGP is also a violation of Section 308 of the Act, 33 U.S.C. § 1318.

19. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$32,500.

20. EPA has notified the New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

21. EPA has notified the public of the filing of this Complaint and has afforded the public thirty days to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

22. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a penalty up to \$32,500.

23. The proposed penalty amount will be determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

24. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, subpart I shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Procedure Act. However, pursuant to 40 C.F.R. § 22.42(b), the Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and the Respondent waives this right unless the Respondent in its answer requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

25. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an answer to this Complaint within thirty (30) days after service of this complaint whether or not Respondent requests a hearing as discussed below.

26. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

27. If Respondent does not file an answer to this Complaint within thirty (30) days after service of this Complaint, a default order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings sixty (60) days after a final default order is issued.

28. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Yerusha Beaver (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

29. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. § 22.05 and § 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

30. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

31. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

32. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

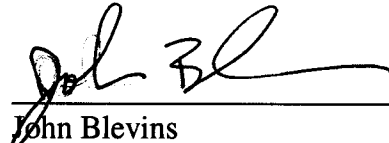
33. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Anthony M. Loston, of my staff, at (214) 665-3109.

34. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

35. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable

regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

7/2/07
Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: The Honorable Kevin Jackson
Mayor, City of Rio Rancho
P.O. Box 15550
Rio Rancho, NM 87174

Carbon copy hand-delivered: Ms. Yerusha Beaver (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: JUL 10 2007

Jackie Samuel